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No. 82-1623

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

IN RE BRANIFF AIRWAYS, INCORPORATED, *et al.*,
Debtors.

AMERICAN AIRLINES, INC.,
Petitioner,

vs.

BRANIFF AIRWAYS, INCORPORATED, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR RESPONDENT BRANIFF AIRWAYS, INCORPORATED IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, 102 S. Ct. 2858 (1982), held that no federal court has jurisdiction to consider any bankruptcy matter?

2. Whether district courts may adopt local rules or make special references delegating certain authority to bankruptcy judges to perform clearly defined and limited tasks in bankruptcy cases?*

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* Pursuant to Supreme Court Rule 28.1, Braniff Airways, Incorporated ("Braniff") states that the following are its parent companies, subsidiaries, and affiliates: BIC Guardian Services, Inc.; Braniff Airways, S.A.; Braniff Airways de Mexico, S.A.; Braniff Education Systems, Inc.; Braniff International Corporation; Braniff International Hotels, Inc.; Braniff Realty Company; Radio Aeronautica Paraguaya, S.A.; and Servicios Aeroporturios Aerosan, S.A.

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BRIEF FOR RESPONDENT BRANIFF AIRWAYS, INCORPORATED IN OPPOSITION

OPINIONS BELOW

The decision of the Court of Appeals below has now been reported. *Braniff Airways, Inc.* v. *CAB*, 700 F.2d 214 (5th Cir. 1983) (per curiam).

STATEMENT OF THE CASE

On May 13, 1982, Braniff Airways, Incorporated ("Braniff") filed a petition for reorganization under Chapter 11 of the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598 (the "Reform Act"), in the U.S. Bankruptcy Court for the Northern District of Texas, Fort

Worth Division.[1] Braniff has since been attempting to reorganize. Among the primary opponents of Braniff's efforts to reorganize have been a small number of competitor airlines which are also creditors. Petitioner American Airlines, Inc. ("American") has been prominent in this group.

On June 28, 1982 this Court decided *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, 102 S. Ct. 2858 (1982), holding that the U.S. Bankruptcy Courts, as established by the Reform Act, had been vested with jurisdiction in excess of that permitted under Art. III of the Constitution. On December 25, 1982, after a stay of almost six months, this Court issued its mandate in *Northern Pipeline.*

To avert a complete collapse in the administration of the nation's bankruptcy laws, the Judicial Conference of the United States had earlier proposed an interim model rule to be adopted by the district courts. On December 21, 1982, the U.S. District Court for the Northern District of Texas promulgated such a rule (*see* Local Rule of the Northern District of Texas Concerning Bankruptcy Cases and Proceedings (the "Local Rule") (Pet. App. F at 28-33)), as did virtually every other district court in the nation (collectively, the "interim rules").

The interim rules proceed from the assumption that bankruptcy jurisdiction of the district courts—as distinguished from the bankruptcy courts—was unaffected by *Northern Pipeline* and that district courts have authority to refer bankruptcy-related matters to bankruptcy judges, subject to this Court's ruling in *Northern Pipeline.* The interim rules, of course, explicitly exclude *Northern Pipeline*-type proceedings from those matters upon which a bankruptcy judge may enter effective judgments or orders.

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[1] When Braniff ceased operations on May 12, 1982, it was the eighth-largest trunk air carrier in the United States; it had approximately $750 million in assets and $1.2 to $1.8 billion in debts.

Under the interim rules, district courts throughout the country have successfully enlisted the aid of experienced bankruptcy judges in the uninterrupted administration of the bankruptcy laws. At the same time, Congress has been actively drafting a longer term solution to the Reform Act's constitutional deficiencies.[2] Thus, the interim rules have avoided a potentially catastrophic nationwide lapse in bankruptcy law and procedure and permitted the efficient allocation of federal judicial resources to bridge the temporary but critical gap in the Reform Act.

American's petition seeks review of a unanimous per curiam decision, issued on February 28, 1983 by the United States Court of Appeals for the Fifth Circuit, affirming the rulings by the District Court of the Northern District of Texas in two discrete proceedings within Braniff's Chapter 11 reorganization case. These jurisdictional rulings and their procedural background are described in American's petition. (*See* Pet. at 5-7.) Subsequent to the Court of Appeals per curiam ruling upholding district court bankruptcy jurisdiction and the Local Rule delegation, both of these proceedings were decided on the merits in favor or American.

1. *Braniff* v. *CAB.* On September 27, 1982, Braniff commenced an adversary proceeding in the bankruptcy

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[2] American is wrong in its unsupported assertion that the promulgation of the interim rules "has lulled Congress into believing . . . there is no urgent need for it to enact a legislative remedy" to the jurisdictional defects in the Reform Act. (Pet. at 9-10.) To the contrary, the 98th Congress has been diligently working on bankruptcy reform legislation. Earlier this year, the Judiciary Committees in both the Senate and the House reported bills designed to repair these defects. *See* S. 1013 (S. Rep. No. 55, 98th Cong., 1st Sess. (1983)); H.R. 3 (H. Rep. No. 9, 98th Cong., 1st Sess. (1983)). On April 27, 1983, the Senate passed S. 1013 (129 Cong. Rec. S5364 (daily ed. April 27, 1983)), and H.R. 3 is now being deliberated by the House. There is therefore every likelihood that the jurisdictional defects identified in *Northern Pipeline* will be remedied in the near future.

court to enjoin the United States Civil Aeronautics Board ("CAB") from revoking Braniff's certificates to serve London and Venezuela from the Dallas/Fort Worth Airport and from awarding the London certificate permanently to American and the Venezuela route to Continental Airlines. Braniff contended the certificates were property of its estate and, as such, were within the protion afforded by Section 541 of the Reform Act. American, which had already been granted temporary authority to serve the London route in lieu of Braniff, intervened in the case on December 29, 1982. The trial in Braniff's suit against the CAB took place on February 16, 1983. On April 4, 1983, the bankruptcy court advised American, Braniff and other parties by letter of its decision "to deny the injunction requested by Braniff," noting that a memorandum decision setting forth the reasons for the denial would follow.

2. *The PSA Proceeding.* On January 14, 1983, the bankruptcy court commenced hearings on Braniff's application for approval of an agreement with Pacific Southwest Airlines ("PSA" and the "PSA Agreement") and related agreements among Braniff and its secured and unsecured creditors. Under the PSA Agreement, PSA agreed to form a new Texas Division to fly some 19 Braniff domestic routes using Braniff airplanes and equipment. American had been flying those routes without significant competition since Braniff's bankruptcy.

After a two-week trial, the bankruptcy court approved the PSA Agreement and the related agreements on February 1, 1983. On February 3-5, the district court conducted a *de novo* hearing on the merits of the PSA proceeding and, on February 18, entered an order upholding those agreements. On February 22, the Court of Appeals agreed to hear and on February 28 the Court of Appeals heard the specially expedited appeal on the merits of the PSA proceeding. Two days later, on March 2, 1983, the

Court of Appeals entered a final judgment reversing the district court's decision on the merits of the PSA proceeding, thus granting American the full relief it had sought.[3]

American now petitions for a writ of certiorari to review the Court of Appeals jurisdictional ruling arising from those proceedings.

REASONS FOR DENYING THE WRIT

The decision of the Court of Appeals is correct. It conflicts with no decision of this Court or any other Court of Appeals. For these reasons alone, the Court should deny the writ.

Furthermore, the interim solution developed by the courts for administering the bankruptcy system until Congress enacts reform legislation is functioning reasonably smoothly without violating congressional intent, Art. III, or the principles set forth in *Northern Pipeline*. In contrast, the alternative proposed by American would create immediate legal and economic chaos by bringing to an abrupt halt the 500,000 or more pending bankruptcy proceedings, involving billions of dollars in assets, and by prohibiting the commencement of any new proceedings until reform legislation is enacted by Congress. (*See* Pet. at 16-17.) As this Court explicitly recognized in staying its decision in *Northern Pipeline* and refusing to make it retroactive, the disruption of the nation's bankruptcy system "would surely visit substantial injustice and hardship." 102 S. Ct. at 2880. The interim rules were designed to prevent this eventuality.

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[3] On April 20, 1983, the Court of Appeals denied Braniff's request for *en banc* consideration of the merits of the PSA proceeding.

I. THE COURTS OF APPEALS HAVE UNANIMOUSLY UPHELD DISTRICT COURT BANKRUPTCY JURISDICTION AND THE LOCAL RULE DELEGATION

American states that the "questionable validity of the local rules . . . has created great uncertainty in the administration of the nation's bankruptcy laws." (Pet. at 9.) This statement is entirely wrong. In fact, few areas of federal law have generated such a consistent body of district court and appellate court decisions in such a short time.

In the few months that have transpired since the promulgation of the interim rules, the Fifth, Sixth and Eighth Circuit Courts of Appeals—the only circuits to consider these issues—have all concluded that district courts have bankruptcy jurisdiction under 28 U.S.C. §§ 1334 and 1471(a) and (b), and that the interim rules are constitutional and valid.

The Fifth Circuit's one-paragraph per curiam opinion in the present case affirmed the decision of the district court upholding jurisdiction "essentially for the reasons stated in its memorandum opinion." *Braniff Airways, Inc.* v. *CAB*, 700 F.2d 214, 215 (5th Cir. 1983) (per curiam) (Pet. App. A).

The district court, in turn, had fully discussed the issues American now raises in its petition. *Braniff Airways, Inc.* v. *CAB (In re Braniff)*, 10 Bankr. Ct. Dec. 30 (N.D. Texas 1983) (Pet. App. C at 5-17). The judge found that "[t]he difficulty [in *Northern Pipeline*] was *not* in separating § 1471(c) from § 1471(a) and (b), but in separating jurisdiction over . . . a case like *Marathon*, requiring an Art. III court, from the other appropriate jurisdiction of the bankruptcy court." *Id.* at 31 (Pet. App. C. at 8) (emphasis in original). He therefore determined that this Court "never intended to invalidate, nor did it invalidate 28 U.S.C. § 1471(a) and (b)." *Id.* Furthermore, he found that even if *Northern Pipeline*

had invalidated 28 U.S.C. § 1471(a) and (b), the district court nonetheless retained bankruptcy court jurisdiction under 28 U.S.C. §§ 1331, 1332, and 1334. *Id.* at 31-32 (Pet. App. C at 8-10).

Turning to the propriety of the Local Rule, the District Judge stated that the district court was "not 'creating' anything, but is instead relying on and making use of an entire structure created by Congress, which will remain in existence through March 31, 1984, and which is already being used for the adjudication of cases filed before October 1, 1979." *Id.* at 32 (Pet. App. C at 11). He determined that the Local Rule was constitutional and was a fully authorized exercise of district court rulemaking authority under 11 U.S.C. § 105(a), 28 U.S.C. § 2071, Federal Rule of Civil Procedure 83, Bankruptcy Rule 927,[4] and the court's inherent equitable powers. *Id.* at 32-34 (Pet. App. C at 11-15).[5]

The Sixth Circuit's unanimous decision is the only Court of Appeals opinion of any length on the subject. *White Motor Corp.* v. *Citibank, N.A.*, No. 82-3638, slip op. (6th Cir. Apr. 1, 1983). In *White Motor*, the court rejected the "fatalistic analysis," *id.* at 11, advanced here by American and correctly pointed out that "the *Northern Pipeline* decision simply does not question the juris-

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[4] Judge Mahon specifically found that the Local Rule was not inconsistent with any Federal Rule of Civil Procedure or Bankruptcy Rule. *Id.* at 33 n.8 (Pet. App. C at 12 n.8).

[5] In addition, citing "exceptional circumstances" involved in the *In re Braniff* Chapter 11 case, Judge Mahon, pursuant to Section (c)(2) of the Local Rule, withdrew the automatic reference to the bankruptcy court and referred *In re Braniff* back to the bankruptcy court, pursuant to both the Local Rule and the inherent equitable authority of district courts to manage proceedings before them (the "Special Reference"). (Pet. App. B at 2-4; 10 Bankr. Ct. Dec. at 33-34; Pet. App. C at 14-17.) The Special Reference authorized the bankruptcy court to exercise powers and discharge functions identically as in the Local Rule "to the extent [the District] Court has jurisdiction." (Pet. App. B at 3.)

diction of the district courts." *Id.* The court went on to hold that district court jurisdiction exists over bankruptcy matters under 28 U.S.C. § 1471(a) and (b) as well as under 28 U.S.C. § 1334. *Id.* at 13-15.

The Sixth Circuit then concluded that the district courts "have both the authority to adopt the interim rule and the obligation to provide for the continuing orderly conduct of bankruptcy proceedings." *Id.* at 15. It found authority for the interim rules under the congressional mandate to the Judicial Conference of the United States, 28 U.S.C. § 331, *et seq.*, and under the general rulemaking authority of the district courts in 28 U.S.C. § 2071 (incorporated into the Federal Rules of Civil Procedure in Rule 83). *Id.* at 15-21. It found no conflict with congressional intent, with this Court's decision in *Northern Pipeline*, or with Art. III of the Constitution. *Id.* at 18.

In March 1983, the Eighth Circuit issued a unanimous per curiam decision to the same effect in *First National Bank of Tekamah* v. *Hansen*, No. 83-1158, slip op. (8th Cir. March 23, 1983) (per curiam).

Thus, three Circuit Courts of Appeals have unanimously rejected American's assertions here. This identity of holdings, coupled with the virtually unanimous rulings by the district courts that have addressed the question,[6]

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[6] The only district court decision cited by American in support of its position was overruled *sub silentio* by the Sixth Circuit holding in *White Motor*. (*See* Pet. at 9 n.3) (citing *In re Matlock Trailer Corp.*, No. 382-02778, slip op. (M.D. Tenn. Feb. 23, 1983)). Every other district court decision to consider these issues has rejected American's position. *See, e.g., Q1 Corp.* v. *Reichenstein (In re Q1 Corp.)*, No. CV-83-0525, slip op. (E.D.N.Y. Mar. 22, 1983); *Moody* v. *Martin*, 27 B.R. 991 (W.D. Wis. 1983); *Otero Mills, Inc.* v. *Security Bank & Trust*, No. 82-373-M, slip op. (D.N.M. Feb. 28, 1983); *Prudential Insurance Co.* v. *Stouffer Corp. (In re Northland Point Partners)*, 26 B.R. 860, 9 Bankr. Ct. Dec. 1412; 26 B.R. 1019 (E.D. Mich. 1983); *Color Craft Press* v. *Nationwide Shopper Systems, Inc. (In re Color Craft Press)*, 10 Bankr. Ct. Dec. 182 (D. Utah

demonstrate that there is no division or confusion in the federal judiciary with respect to the issues raised in American's petition. Accordingly, there is no need for this Court to review the Fifth Circuit decision to provide consistency on these questions.

II. THE DECISION OF THE COURT OF APPEALS IS CORRECT AND CONSISTENT WITH THIS COURT'S DECISION IN *NORTHERN PIPELINE*

A. District Courts Have Bankruptcy Jurisdiction

1. *Jurisdiction exists under 28 U.S.C. § 1471(a) and (b)*

American attempts to create a conflict between the Court of Appeals decision and this Court's ruling in *Northern Pipeline* by a strained, overly broad, and incorrect reading of *Northern Pipeline*. That decision invalidated the jurisdiction of the bankruptcy courts under the Reform Act on the basis that the bankruptcy courts could not constitutionally exercise the full power conferred on Art. III courts. But, as the Court of Appeals correctly ruled, *Northern Pipeline* did not invalidate the district courts' bankruptcy jurisdiction.

As stated by Justice Brennan's four-Justice plurality opinion, the sole issue presented in *Northern Pipeline* was "whether the assignment by Congress *to bankruptcy judges* of the jurisdiction granted in § 241(a) of the [Reform Act] violates Art. III of the Constitution." 102 S. Ct. at 2862 (emphasis added). The holding of the plurality opinion went no further; it held only that "the broad grant of jurisdiction *to the bankruptcy courts* contained in § 241(a) [at 28 U.S.C. § 1471(a)] is unconstitutional." 102 S. Ct. at 2880 (emphasis added).

1983). The decision in *Color Craft Press* was concurred in by all four district court judges in the District of Utah.

American's argument to the contrary is predicated exclusively on an erroneous interpretation of footnote 40 in the plurality opinion.[7] In footnote 40, the plurality stated that the grant of jurisdiction *to the bankruptcy courts* was not internally severable in light of the overall plan of the Reform Act, and replied to a suggestion by Chief Justice Burger, in dissent, that *Congress* could remedy the Art. III problem by routing to the district courts the kind of state law claims at issue in *Northern Pipeline* and by leaving intact the remaining jurisdiction of the bankruptcy courts. 102 S. Ct. at 2882. The plurality responded to the Chief Justice by saying that it was not for the Court to anticipate how Congress would redefine or reallocate *bankruptcy court* jurisdiction after the *North-*

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[7] Footnote 40 states in full:

"It is clear that, at the least, the new *bankruptcy judges* cannot constitutionally be vested with jurisdiction to decide this state-law contract claim against Marathon. As part of a comprehensive restructuring of the bankruptcy laws, Congress has vested jurisdiction over this and all matters related to cases under title 11 in *a single non-Art. III court*, and has done so pursuant to a single statutory grant of jurisdiction. In these circumstances we cannot conclude that if Congress were aware that the grant of jurisdiction could not constitutionally encompass this and similar claims, it would simply remove the jurisdiction of *the bankruptcy court* over these matters, leaving the jurisdictional provision and adjudicatory structure intact with respect to other types of claims, and thus subject to Art. III constitutional challenge on a claim-by-claim basis. Indeed, we note that one of the express purposes of the Act was to ensure adjudication of all claims in a single forum and to avoid the delay and expense of jurisdictional disputes. See H.R. Rep. No. 95-595, *supra*, pp. 43-48; S. Rep. No. 95-989, p. 17 (1978). Nor can we assume, as THE CHIEF JUSTICE suggests, *post*, at 2, that Congress' choice would be to have this case 'routed to the United States district court of which the bankruptcy court is an adjunct.' We think that it is for Congress to determine the proper manner of restructuring the Bankruptcy Act of 1978 to conform to the requirements of Art. III, in the way that will best effectuate the legislative purpose." 102 S. Ct. at 2880 n.40 (emphasis added).

ern Pipeline holding.[8] The plurality's reference in the footnote is thus exclusively to the jurisdiction of the bankruptcy courts.[9]

Justice Rehnquist's two-Justice concurrence removes all doubt as to the reach of the *Northern Pipeline* holding. Justice Rehnquist agreed with the plurality's holding that the bankruptcy court could not constitutionally be granted jurisdiction of Northern Pipeline's common law action against Marathon. But he and Justice O'Connor were unwilling to decide any larger constitutional question on the jurisdiction of the bankruptcy courts, and did not even address the issue of the jurisdiction of the district courts. 102 S. Ct. at 2881. In stating his position on the appropriate order to be entered by this Court, Justice Rehnquist stated:

> "I would, therefore, hold so much of the Bankruptcy Act of 1978 as enables *a Bankruptcy Court* to entertain and decide Northern's lawsuit over Marathon's objection to be violative of Art. III of the United States Constitution. Because I agree with the plurality that this grant of authority is not readily severable from the remaining grant of authority *to Bankruptcy Courts* under § 241(a), see [footnote 40], I concur in the judgment." 102 S. Ct. at 2882 (emphasis added).

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[8] Because the Chief Justice did not recommend and no party had requested that the Court remand the case to the jurisdiction of the district court for further proceedings, American's claim that this Court "declined to transfer [the case] to the civil docket of the district court" is without basis. (Pet. at 12; *see also id.* at 13.)

[9] This fact is made even more apparent by the references in footnote 40 to "Art. III constitutional challenge" and "conform-[ing] to the requirements of Art. III." As there can clearly be no Art. III infirmity with regard to the district courts, the footnote can logically apply only to bankruptcy courts.

This is precisely the analysis of *Northern Pipeline* followed in this case by the district court and affirmed by the Court of Appeals.[10]

Thus, it is clear that this Court in *Northern Pipeline* did not strip the district courts of the bankruptcy jurisdiction that Congress so clearly defined in 28 U.S.C. § 1471(a) and (b).

2. *Jurisdiction exists under 28 U.S.C. §§ 1334, 1331, and 1332*

Furthermore, the district court and Court of Appeals correctly determined that, even if *Northern Pipeline* could be read to strike down all district court bankruptcy jurisdiction granted in the Reform Act, the grant of jurisdiction to district courts in 28 U.S.C. § 1334 over summary bankruptcy matters continues, complemented by the court's federal question jurisdiction granted in 28 U.S.C. § 1331 and the diversity jurisdiction granted in 28 U.S.C. § 1332. Thus, whatever the effect of *Northern Pipeline* on the Reform Act jurisdiction, these jurisdictional provisions fully empower the district courts to hear and decide most bankruptcy-related matters, including those at issue here.

Section 1334 provides the district courts with "original jurisdiction, exclusive of the courts of the States, of all matters and proceedings in bankruptcy." 28 U.S.C. § 1334. This encompasses the "summary jurisdiction"

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[10] In *White Motor, supra*, slip op. at 12, the Sixth Circuit reached the same conclusion as to the meaning of Justice Rehnquist's concurring opinion:

> "We do not believe that the concurring Justices intended to issue a broad declaration that the grant of jurisdiction in bankruptcy matters, which for two hundred years have been adjudicated under the auspices of the district courts, is unconstitutional, without ever referring directly to the district courts, to their historical role in the bankruptcy system, or to the various sources of their jurisdiction contained in the old and new Bankruptcy Acts."

of the old Bankruptcy Act and thus includes *Braniff* v. *CAB* and the PSA proceeding. *See Friedman* v. *Snelling*, 526 F.2d 1346, 1348 (1st Cir. 1975).[11]

Although the Reform Act amends Section 1334, it explicitly leaves the jurisdictional grant of the original Section 1334 in full force and effect until the end of the transition period on April 1, 1984. Reform Act § 402 (b).[12] American claims that Congress inadvertently forgot to repeal Section 1334, as currently codified, when it passed the Reform Act. (Pet. at 21-22.) This argument, however, is belied by the extraordinary care that Congress exercised in reformulating the bankruptcy law and its jurisdictional provisions. *See* Reform Act §§ 401-405. In any case, American cites no precedent for the proposition that a court may repeal a statute where Congress forgot to do so.[13] On the contrary, a statute

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[11] *Braniff* v. *CAB* was a dispute concerning property in the possession of Braniff's estate, and was therefore clearly a "summary" proceeding. Bankruptcy Act of 1898 § 111 (reorganization court has "exclusive jurisdiction of the debtor and its property, wherever located"). The PSA proceeding issues centered on the use, sale, or lease of Braniff assets and was therefore also "summary." *Id.* § 116(3) (district judge may authorize the lease or sale of "any property of the debtor"). American mischaracterizes the nature of the PSA proceeding in arguing to the contrary. (Pet. at 23 n. 20.) There was no adversary lawsuit on the question of Braniff's landing rights to render this aspect of the PSA proceeding "plenary." In any event, the PSA proceeding was clearly also within the district court's federal question jurisdiction. *See* fn. 17, *infra*.

[12] Section 402(b) of the Reform Act states that, subject to certain exceptions not relevant here, "the amendments made by Title II of this Act shall take effect on April 1, 1984."

[13] In *New York State Higher Education Services Corp.* v. *Adamo*, 619 F.2d 216 (2d Cir.), *cert. denied*, 449 U.S. 843 (1980), relied on by American (Pet. at 21-22), the court did the reverse. It cured an 11-month gap in the student loan nondischargeability provision by reading the prior law as *not* being repealed until the new law went into effect. But even that court relied in part on explicit congressional expression of its mistake and the subsequent enactment by Congress of corrective legislation. 619 F.2d at 219-22.

on the books and validly enacted must be given effect in accordance with its plain meaning. *See, e.g., Bread Political Action Committee* v. *Federal Election Commission*, 455 U.S. 577, 580-81 (1982).[14]

American's argument is defective in another respect. On the one hand, American argues that the grant of jurisdiction to district courts in 28 U.S.C. § 1471(a) and (b) makes Section 1334 unnecessary and evidences congressional intent to repeal it. However, American also argues that *Northern Pipeline* struck down Sections 1471(a) and (b). American cannot have it both ways. If Sections 1471(a) and (b) repealed Section 1334, then the invalidation of those sections by *Northern Pipeline* would automatically revive Section 1334. It is an "elementary rule of statutory construction . . . that a void act cannot operate to repeal a valid existing statute, and the law remains in full force and operation as if the repeal had never been attempted." *Weissinger* v. *Boswell*, 330 F. Supp. 615, 625 (M.D. Ala. 1971) (three-Judge Court per curiam) (quoting *Conlon* v. *Adamski*, 77 F.2d 397, 399 (D.C. Cir. 1935)). *See also Frost* v. *Corporation Commission of Oklahoma*, 278 U.S. 515, 526 (1929); *Stewart* v. *Waller*, 404 F. Supp. 206, 215 (N.D. Miss. 1975) (three-Judge Court per curiam).

In addition, this Court long ago recognized that the federal bankruptcy laws may serve as a basis for federal question jurisdiction under 28 U.S.C. § 1331, which grants district courts original jurisdiction of "all civil actions arising under" the laws of the United States. *Hull* v. *Burr*, 234 U.S. 712, 720-22 (1914); *Lovell* v. *Newman & Son*, 227 U.S. 412, 423 (1913) (federal question jurisdiction exists where plaintiff relies "upon

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[14] American cites cases discussing the new Section 1334 before the release of the mandate in *Northern Pipeline*. (*See* Pet. at 22 n.19.) These cases do not even remotely address the question of the district courts' original jurisdiction under Section 1334.

any right specially conferred upon him under the Federal [Bankruptcy] statute"). *See also National Mutual Insurance Co.* v. *Tidewater Transfer Co.*, 337 U.S. 582, 611 (1949) (Rutledge, J., concurring) ("[F]ederal court adjudication of disputes arising pursuant to bankruptcy and other legislation is conventional federal-question jurisdiction.").[15]

American argues that jurisdiction under 28 U.S.C. § 1331 over actions arising under the federal bankruptcy laws would render the jurisdictional provisions of the bankruptcy laws surplusage. (Pet. at 19-20.) American, however, wholly misconstrues the nature of Section 1331 and its relationship to specific grants of jurisdiction conferred in separate acts of Congress. Courts routinely find district court jurisdiction under both the general provisions of Section 1331 and more specific jurisdiction stat-

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[15] *Accord, Girardier* v. *Webster College*, 563 F.2d 1267, 1270 (8th Cir. 1977); *Handsome* v. *Rutgers University*, 445 F. Supp. 1362, 1364 (D.N.J. 1978).

Romero v. *International Terminal Operating Co.*, 358 U.S. 354 (1959), heavily relied on by American (Pet. at 20), lends support to this view. In finding that Section 1331 did not encompass maritime jurisdiction, Justice Frankfurter relied on the fact that federal question jurisdiction and maritime jurisdiction were each clearly derived from separate clauses of Art. III, Section 2, of the Constitution:

> "Certainly the accomplished lawyers who drafted the Act of 1875 [the predecessor to 28 U.S.C. § 1331] drew on the language of the constitutional grant on the assumption that they were dealing with a distinct class of cases, that the language incorporated in their enactment precluded 'identity' with any other class of cases contained in Article III." 358 U.S. at 366-67 (footnote omitted).

Bankruptcy jurisdiction, unlike admiralty and maritime jurisdiction, is not mentioned in Art. III. It is part of the constitutional grant of federal court "judicial power" only by virtue of its inclusion in Art. III's first clause—"arising under this Constitution [and] the Laws of the United States"—the same clause from which Section 1331 is derived.

utes. *See, e.g., Leroy* v. *Great Western United Corp.*, 443 U.S. 173, 178-79 (1979) (lower court found subject matter jurisdiction under Section 1331 and three specific unrelated statutory grants of jurisdiction); *Colorado River Water Conservation District* v. *United States*, 424 U.S. 800, 809 & n.15 (1976) (jurisdiction under 28 U.S.C. §§ 1331 and 1345).[16] Clearly, then, district court jurisdiction is on solid footing for any case which "arises under" the federal bankruptcy laws—such as *Braniff* v. *CAB* and the PSA proceeding.[17]

Furthermore, federal courts have adjudicated bankruptcy-related matters that might not otherwise have been cognizable in a federal forum where there was diversity of citizenship under 28 U.S.C. § 1332. *See, e.g., Hull* v. *Burr, supra*; *Lovell* v. *Newman & Son, supra*; *Bloor* v. *Falstaff Brewing Corp.*, 601 F.2d 609 (2d Cir. 1979); 13 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 3570, at 472-73 (1975). That jurisdiction, of course, continues.

Accordingly, even if 28 U.S.C. § 1471(a) and (b) had never been enacted, the district courts would have

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[16] Courts have also found jurisdiction under Section 1331 to avoid difficult questions of jurisdiction under separate statutory provisions. *See, e.g., Hunt* v. *Washington State Apple Advertising Commission*, 432 U.S. 333, 340 n.4 (1977).

[17] All of the substantial and determinative issues in these proceedings were federal. *Braniff* v. *CAB* involved the application of Reform Act Sections 105 and 541 and the Federal Aviation Act, which governs the CAB's power to issue certificates authorizing airlines to serve certain routes. The PSA proceeding involved the application of the same Reform Act sections as well as Sections 362, 363, 365, 507, 1107, 1123, and others, and it too raised questions under the Federal Aviation Act. None of the courts below relied on state law in their decisions in either of these proceedings.

Moreover, if a bankruptcy-related matter is before the court on the basis of federal question jurisdiction, the doctrine of pendent jurisdiction will apply to grant the Court power to adjudicate additional state law matters. *See United Mine Workers* v. *Gibbs*, 383 U.S. 715 (1966).

jurisdiction over most bankruptcy and related matters, including those at issue here, pursuant to 28 U.S.C. §§ 1331, 1332 and 1334 and the resulting pendent jurisdiction.[18]

B. The Court of Appeals Decision Upholding the Local Rule Is Correct and Consistent with *Northern Pipeline*

1. *The bankruptcy courts are in fact now adjuncts of the district courts*

There is no conflict between Art. III and the Local Rule. The *Northern Pipeline* plurality found that the new bankruptcy courts were "exercising powers far greater than those lodged in the adjuncts approved in" earlier Supreme Court cases, 102 S. Ct. at 2879; but the plurality acknowledged that district court "adjuncts" do comport with Art. III requirements "so long as those adjuncts [are] subject to sufficient control by an Art. III district court." *Id.* at 2875. The Local Rule passes constitutional muster and conforms to the principles enunciated by the plurality in *Northern Pipeline* precisely because it was carefully crafted to insure that the "essential attributes of judicial power" and the "ultimate decisionmaking authority" remain in the district court, not in the adjunct. 102 S. Ct. at 2874-76. It therefore fully complies with the constitutional standards

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[18] American argues that if the district courts do have bankruptcy jurisdiction, they alone must exercise it because Congress intended that bankruptcy jurisdiction be lodged in a single forum. (Pet. at 17.) Needless to say, American makes absolutely no showing that Congress would prefer the total cessation of bankruptcy jurisdiction or a crippling bankruptcy burden on the district courts (the choices American offers) to the delegation scheme adopted in the Local Rule. The Local Rule chooses as an interim solution the closest approximation of the congressional intent expressed in the Reform Act and prior bankruptcy law, utilizes the extensive resources of the bankruptcy courts that would otherwise be wasted during this interim period, and is fully consistent with this Court's judgment in *Northern Pipeline*.

enunciated in *United States* v. *Raddatz*, 447 U.S. 667 (1980).

Under the Local Rule, the bankruptcy courts are subject to comprehensive control by the district courts. Bankruptcy judges operate exclusively by reference from a district court and have no independent jurisdiction. The district court, on its own motion or on the motion of a party, may withdraw or limit the reference at any time. Local Rule § (c)(2).[19] Because the procedures are court-created, the district court may restructure, modify, or completely eliminate them at any time. Fed. R. Civ. P. 83.[20]

Moreover, only the district court may conduct bankruptcy jury trials,[21] and in any matter initially tried to

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[19] The *Northern Pipeline* plurality stated that perhaps the most significant change in the Reform Act was the new bankruptcy court independence, pointing out that under the old law "the district court retained control over the reference by his power to withdraw the case from the referee." 102 S. Ct. at 2876 n.31. Under the Local Rule, the district court clearly retains this control.

[20] This complete control by the Judicial Branch eliminates the underpinnings of at least a major portion of the Art. III concerns expressed in *Northern Pipeline*—the potential for control or manipulation of judicial officers by the Executive or Legislative Branches. These separation-of-powers concerns disappear where an adjunct's functions are established by and subject to the exclusive control of the judiciary, as under the Local Rule. As Justice Blackmun said in his concurring opinion in *United States* v. *Raddatz*, *supra*, justifying a judicial reference to a magistrate that was subject to much more limited judicial control than the Local Rule imposes on bankruptcy judges: "[T]he only conceivable danger of a 'threat' to the 'independence' of the magistrate comes from within, rather than without, the judicial department." 447 U.S. at 685.

[21] The Local Rule removes the bankruptcy court's power, provided in the Reform Act, to conduct jury trials. Local Rule § (d)(1)(D). The *Northern Pipeline* plurality considered the power to conduct jury trials to be one of the attributes of judicial power. 102 S. Ct. at 2879.

the bankruptcy court there is an express right to a *de novo* district court determination.[22] There is no doubt, therefore, that the district court is the ultimate judicial decisionmaker.

In accordance with the plurality's analysis in *Northern Pipeline*, the Local Rule carefully distinguishes between those "core" matters that are central to the bankruptcy case and matters that are "related proceedings." Local Rule § (d)(2)-(3). Under the Local Rule, bankruptcy judges may enter effective orders and judgments only with respect to those matters on which they could have entered effective orders and judgments prior to the Reform Act. With respect to all other matters—including "civil proceedings that in the absence of a petition in bankruptcy, could have been brought in a district court or state court" and "claims brought by the estate against parties who have not filed claims against the estate," *id.* § (d)(3)(A)—bankruptcy judges may issue only *proposed* orders or judgments.

Entry of an effective judgment or order by a bankruptcy judge on the types of matters permitted under the Local Rule is proper. All nine Justices in *Northern Pipeline* recognized that Congress may create legislative courts or adjuncts to adjudicate congressionally created or "public" rights. 102 S. Ct. at 2869-71, 2874-78 (Brennan, J.), 2882 (Rehnquist, J.), 2883 (White, J.). The plurality gave as an example disputes involving certifi-

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[22] An important aspect of district court control discussed in *Northern Pipeline* was the scope of review. The plurality noted that in *Crowell* v. *Benson*, 285 U.S. 22 (1932), the agency's orders were to be set aside if "not supported by the evidence," while under the Reform Act the bankruptcy court's findings were subject to review only on the more deferential "clearly erroneous" standard. 102 S. Ct. at 2879. The Local Rule, however, provides for a *de novo* determination by the district court. Local Rule § (e)(2)(B). Such a scope of review was expressly approved in *Raddatz*, *supra*, 447 U.S. at 680.

cates and licenses. *Id.* at 2871. This would include, for example, the certificates at issue in *Braniff* v. *CAB*. The plurality also recognized the use of legislative courts to adjudicate "the restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power." 102 S. Ct. at 2871. Such matters, of course, include the bankruptcy court's consideration of the PSA Agreement and the related agreements with Braniff's creditors, all of which the Court of Appeals found related to the restructuring of debtor-creditor relations.[23]

2. *The Local Rule was properly promulgated*

Not only is the Local Rule in accord with congressional intent, *Northern Pipeline*, and Art. III, it is also a fully authorized exercise of judicial control over the administration of court business. On December 17, 1982, the Judicial Council of the Fifth Circuit, acting pursuant to 28 U.S.C. § 332, submitted the interim rule to the district courts of the Fifth Circuit. The Judicial Councils have statutory authority to "make all necessary and appropriate orders for the effective and expeditious administration of justice within [the] circuits," 28 U.S.C. § 332(d)(1), and therefore have full rulemaking powers.[24]

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[23] Such "public rights" matters are typically presented to administrative agencies, and without doubt such agencies may enter effective and final orders and judgments. *See* Administrative Procedure Act, 5 U.S.C. § 704 ("final agency action" subject to judicial review); *Mathews* v. *Eldridge*, 424 U.S. 319 (1976) (administrative decisions terminating Social Security benefits are "final decisions" and may be implemented before district court review). In matters arising from congressionally created rights, *Northern Pipeline* establishes no constitutional distinction between the entry of orders or judgments by administrative agencies and their entry by bankruptcy judges.

[24] Justice Harlan stated that:

> "Within the framework of the statutes establishing the inferior federal courts and defining their jurisdiction, the Judicial Councils are charged with the duty to take such actions as are necessary for the expedition of the business of the courts in

Several courts have already upheld the validity of interim rules on the basis that they were adopted pursuant to the recommendation or order of the relevant Judicial Council. *See White Motor Corp.* v. *Citibank, N.A., supra; Q1 Corp* v. *Reichenstein (In re Q1 Corp.)*, No. CV-83-0525, slip op. (E.D.N.Y., Mar. 22, 1983); *Prudential Insurance Co.* v. *Stouffer Corp. (In re Northland Point Partners)*, 26 B.R. 1019 (E.D. Mich. 1983). As stated in *Prudential Insurance*: "It is clear that the council's obligation to assure the 'effective and expeditious administration of justice within this circuit' would have been ill-served if there had been no response to the Supreme Court's refusal to extend the stay in *Marathon*." *Id.* at 1021.

Furthermore, the local rulemaking authority contained in Federal Rule 83 [25] and in the equivalent Bankruptcy Rule 927 [26] embraces important matters of court procedure and also authorizes the Local Rule. In *Colgrove* v. *Battin*, 413 U.S. 149 (1973), this Court upheld a local rule authorizing six-person juries in civil cases over the objection that the rule violated the Seventh Amendment and was inconsistent with the assumption in Federal

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each circuit." *Chandler* v. *Judicial Council of the Tenth Circuit*, 398 U.S. 74, 108 (1970) (Harlan, J., concurring).

[25] The local rulemaking authority is set forth in the first sentence of Rule 83:

> "Each district court by action of a majority of the judges thereof may from time to time make and amend rules governing its practice not inconsistent with these rules."

[26] Bankruptcy Rule 927 is very similar to Rule 83 and provides the same authority to a district court in bankruptcy proceedings that Rule 83 provides to the district court generally. *See* Rule of Bankruptcy Procedure 927, advisory committee note ("This rule is an adaptation of Rule 83 . . . ."). The district court below relied on both provisions in upholding the Local Rule. (Pet. App. C at 11-12.)

Rule 48 that twelve-person juries are required unless the parties stipulate otherwise. *Id.* at 152-160, 163-64 & n.23. In *Franquez* v. *United States*, 604 F.2d 1239 (9th Cir. 1979), the Ninth Circuit upheld a district court order granting a jury trial in a suit by Guam landowners to recover fair compensation for land taken from them by the United States, even though the plaintiffs had no constitutional or statutory right to a jury trial.

American relies for its contrary view on *Miner* v. *Atlass*, 363 U.S. 641 (1960), which struck down a local rule providing for depositions in admiralty cases. But this Court in its subsequent decision in *Colgrove* v. *Battin*, *supra*, found no inconsistency with *Miner* and explained that local rules are sustainable if they do not contain aspects "which bear upon the ultimate outcome of the litigation and thus . . . 'may be of as great importance to litigants as many a "substantive" doctrine . . . .'" 413 U.S. at 163 n.23 (citation omitted). Here, the Local Rule does not affect the ultimate outcome of bankruptcy litigation or expand or alter the basic rules of bankruptcy proceedings and litigation.[27] Instead, it delegates limited authority to a bankruptcy judge to hear bankruptcy cases, subject to preexisting bankruptcy litigation rules[28] and subject to a *de novo* determination

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[27] Nor, of course, does the Local Rule expand the jurisdiction of the district courts. *See Q1 Corp.* v. *Reichenstein*, *supra*. Federal Rule 82 and the cases cited by American for the proposition that federal court jurisdiction may not be enlarged by rulemaking (Pet. at 25 n.25) are therefore not relevant.

[28] Paragraph (g) of the Local Rule provides that:

"Courts of bankruptcy and procedure in bankruptcy shall continue to be governed by Title IV of Public Law 95-598 as amended and by the bankruptcy rules prescribed by the Supreme Court of the United States pursuant to 28 U.S.C. § 2075 and limited by SEC 405(d) of the Act, to the extent that such Title and Rules are not inconsistent with the hold-

by the district court. The Local Rule is, in fact, a less "substantive" innovation than the reduction in jury size upheld in *Colgrove v. Battin*, *supra*, or the creation of a right to a jury trial in *Franquez* v. *United States*, *supra*.[29]

American contends that Rule 53 is the exclusive authority for references of this kind by a district court. But Rule 53 is a specialized reference device that is used most often to refer narrow, highly technical factual or accounting issues to experts for initial resolution. This explains why the findings of a master must be sustained unless "clearly erroneous." Fed. R. Civ. P. 53(e)(2).[30] Furthermore, Rule 53 does not "occupy the field" of judicial references. This is clear from the enactment in 1968 of the Federal Magistrates Act, 28 U.S.C. §§ 631, *et seq.*, which unquestionably provides for judicial reference outside the scope of, and under standards different from, Rule 53.[31] Since American's premise is plainly

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ing of *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, 102 S. Ct. 2858 (1982)."

[29] *Kimbrough* v. *Holiday Inn*, 478 F. Supp. 566 (E.D. Pa. 1979), supports this view. The court there upheld the validity of an experimental local rule, adopted by several district courts at the Justice Department's request, mandating a compulsory arbitration system in certain classes of cases where the remedy sought was money damages of $50,000 or less. Finding that the local rule did not exceed Rule 83 authority, the court emphasized that the rule was promulgated "for a limited time period" and was ultimately intended "to benefit the entire federal judicial system." *Id.* at 574.

[30] *See* Note, *Masters and Magistrates in the Federal Courts*, 88 Harv. L. Rev. 779, 795 & n.106 (1975). The great deference given to a master's findings also leads logically to the "exceptional condition" requirement for appointing a master in a nonjury action. Fed. R. Civ. P. 53(b). 88 Harv. L. Rev., *supra*, at 798 n.130.

[31] A magistrate may act as a special master, *id.* § 636(b)(2), but this Court has stated that, under the Act, "not every reference, for whatever purpose, is to be characterized as a reference to a special master." *Mathews* v. *Weber*, 423 U.S. 261, 273 (1976).

wrong,[32] *La Buy* v. *Howes Leather Co.*, 352 U.S. 249 (1957), relied on by American, is simply not applicable.[33]

Finally, this Court has long recognized a district court's "inherent power to provide [itself] with appropriate instruments required for the performance of [its] duties." *In re Peterson*, 253 U.S. 300, 312 (1920) (Brandeis, J.). The last sentence of Rule 83 reflects this principle[34] by providing: "In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules." The courts have frequently affirmed this inherent authority. *Ruiz* v. *Estelle*, 679 F.2d 1115 (5th Cir. 1982); *Franquez* v. *United States*, *supra*.[35] The district court's exercise of this inherent authority was certainly proper in this case.

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[32] American relies for its premise on language from *Arthur Murray, Inc.* v. *Oliver*, 364 F.2d 28 (8th Cir. 1966), where the district court expressly appointed a special master in circumstances the Eighth Circuit found to be inappropriate. (Pet. at 25.) *Arthur Murray* stands only for the proposition that if a court appoints a special master under Rule 53, it must adhere to Rule 53's requirements.

[33] (*See* Pet. at 25-26.) *La Buy* merely confirmed the requirement in Rule 53(b) that "some exceptional condition" must be present for a district court to appoint a master in a nonjury proceeding. Although Rule 53 has not been invoked here, the requirement of Rule 53(b) would certainly have been satisfied by the fact that the district court expressly found several "exceptional circumstances" when it adopted the Local Rule, *see* Local Rule § (a), and the district judge below made similar findings with respect to the particular case of *In re Braniff* in making the Special Reference. (Pet. App. B at 2-3; Pet. App. C at 15-17.)

[34] *See* 12 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 3155 (1973).

[35] *See also Schwimmer* v. *United States*, 232 F.2d 855, 865 (8th Cir.), *cert. denied*, 352 U.S. 833 (1956) ("Beyond the provisions of Rule 53 . . . for appointing and making references to Masters, a Federal district court has 'the inherent power to supply itself with this instrument for the administration of justice when deemed by it essential.'") (quoting *Peterson, supra*).

Thus, the Court of Appeals correctly ruled that the Local Rule was a constitutional exercise of established judicial authority.

CONCLUSION

For the foregoing reasons, this Court should deny American's Petition for Writ of Certiorari.

Respectfully submitted,

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